



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Mental Health, Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-140-10 et seq. 12 VAC 35-150-10 et seq. 12 VAC 35-160-10 et seq. 12 VAC 35-20-10 et seq.
Regulation Title:	Mandatory Standards for Community Mental Health Programs; Mandatory Standards for Community Mental Retardation Programs; Mandatory Standards for the Community Substance Abuse Programs; and Mandatory Standards for the Certification of First Offender Drug Abuse Diversion and Education Programs
Action Title:	Repeal
Date:	June 4, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The four regulations, which are proposed to be repealed, prescribe minimum standards for mental health, mental retardation and substance abuse programs of community services boards and first offender drug abuse diversion and education programs. These regulations were first promulgated in the early 1980s and were designed to ensure the health, safety and welfare of individuals receiving services from these programs. All of these community programs are now subject to the Board's licensing regulations that govern program operations and are intended to protect clients who receive services from these programs. The four regulations also duplicate many elements of the Department's contracts with community services boards, which are monitored through routine performance reports and reviews. Therefore, these regulations are not necessary and are proposed for repeal.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

According to the Virginia's Office of the Attorney General, the Board of Mental Health, Mental Retardation and Substance Abuse Services (Board) has the authority to repeal these regulations under Va. Code §§ 37.1-10; 37.1-179.1; 37.1-181; and 37.1-182. The referenced sections of the Code provide the legal authority for the Board's licensing regulations. Va. Code § 37.1-179.1 states:

"The Commissioner, subject to rules and regulations promulgated by the Board, may license any suitable person to establish, maintain and operate, or to have charge of any facility or institution which provides care or treatment for mentally ill persons, mentally retarded persons or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants..."

The Board promulgated *Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services*, 12 VAC 35-102-10 et seq., in January 1995. (The Board has recently proposed to replace these regulations with updated regulations for licensing.) The regulations which have been proposed for repeal by this action (12 VAC 35-140-10 et seq., 12 VAC 35-150-10 et seq., 12 VAC 35-160-10 et seq. and 12 VAC 35-20-10 et seq.) are outdated and duplicate the intent and function of the existing licensing regulations.

The Code of Virginia at § 37.1-183.1 also requires that persons operating facilities that care or treatment to persons with mental illness, mental retardation or substance abuse to be licensed in accordance with the provisions of the law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Board has determined that the four existing regulations are not necessary and has therefore undertaken this action for repeal. These regulations establish general standards for community programs in areas such as program planning and evaluation, administration, clinical management and service delivery, and service components that are intended to protect health and safety of individuals who receive services from these programs. All such program providers now require a license to operate according to § 37.1-183.1 of the Code of Virginia and the rules and regulations that have been promulgated by the Board. The licensing regulations prescribe standards for program operations that are designed to protect the individuals who receive services from these program providers. Therefore, the four regulations that the Board has proposed to repeal duplicate the goals and functions of the existing licensing regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

This regulatory action is intended to repeal four unnecessary regulations which have been superseded by the existing regulations for licensing. No new substantive provisions or substantive changes are being proposed.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

There are no disadvantages to the public or the Commonwealth associated with the repeal of these regulations. This action would not adversely affect the health, safety and welfare of Virginia citizens. These regulations have been superseded by the licensing regulations that provide the means necessary to protect the health and welfare of citizens who receive services from community mental health, mental retardation and substance abuse programs. In addition, these regulations replicate many of the elements in the Department's contracts with community services boards which are designed to ensure the accountability of community providers and

protections for the clients who are served. This action will eliminate unneeded and outdated regulations and thereby eliminate any potential for confusing or conflicting regulatory standards.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There is no anticipated initial or ongoing fiscal impact to the state to repeal the four sets of regulations. This repeal will have no projected financial impact on localities, individuals or businesses. Because the regulatory standards established by these four regulations have been replaced by the standards for licensing, they are not currently being implemented. Therefore, the repeal is not expected to have any fiscal impact on the agency or any individual or provider organization.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

This action involves the repeal of four outdated regulations. No changes are proposed to the existing regulations.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The four regulations are not the most rational or least burdensome alternative for protecting the health and safety of individuals receiving services from mental health, mental retardation and substance abuse programs of community services boards and first offender drug abuse diversion and education programs. The licensing regulations provide a single set of regulatory standards for community programs that fulfill the objectives of these four sets of regulations. Therefore, these four regulations are superfluous and should be repealed.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comment was received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

This action proposes the repeal of four outdated regulations. Therefore, determination regarding the clarity of these regulations is not relevant.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

This action proposes the repeal of four outdated regulations. It will not be necessary schedule a re-evaluation following the proposed repeal

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These four regulations were designed to provide assurance to families that the community programs that provide mental health, mental retardation and substance abuse services would be held accountable for the health and safety of the citizens that they serve. Because there are now alternative mechanisms in place to provide this function, the repeal of these four regulations should not have any adverse impact on families.